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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Sacramento)

THE PEOPLE,

Plaintiff and Respondent,

v.

NICHOLAS DOMINGUEZ,

Defendant and Appellant.

C068171

(Super. Ct. No. 10F07311)

Defendant, Nicholas Dominguez, pled no contest to being a felon in possession of a firearm and street terrorism. Sentenced to two years and eight months in state prison, defendant appeals claiming the magistrate erred in denying his motion to suppress. Finding no error, we affirm.

BACKGROUND

On October 31, 2010, Andrew Martin and Ryan Clouse were brought to the UC Davis Medical Center emergency room, both suffering from gunshot wounds. A witness reported that one of the victims was brought to the hospital in a "GMC Envoy type SUV." Monica Martin was identified as the person who drove the

Envoy to the hospital that night. Riding along with Monica were Anthony Cain and Bobby Martin, both members of the Varrio Diamonds gang, and Lisa Malius.

Two law enforcement officers were at the hospital that night; one officer described the Envoy as a "tan GMC," the other described it as a "gold GMC," both noted the license plate No. was 5HQG990. A search of the Envoy was conducted and the officers found a ".357 revolver" and "some body armor" inside the vehicle. There was, however, no damage to the Envoy that was "consistent with th[e] car actually having been involved in a shooting that night." No one was arrested.

On November 3, 2010, another gang-related shooting took place on Thurman Way at approximately 11:20 a.m.. Twenty or twenty-five minutes later, there was a third gang-related shooting at 4881 Martin Luther King Boulevard.

At the shooting on Martin Luther King Boulevard, a "brown or gray" SUV pulled up to a house where people were gathered in the driveway.¹ Four Hispanic males were inside the vehicle; one of the passengers asked the people in the driveway where they were from, then fired approximately six rounds from "some sort of assault rifle" before "speeding off."

¹ Following defendant's arrest, the witnesses were shown pictures of the Envoy, license plate No. 5HQG990. Each indicated that Envoy was "the wrong color."

Ten minutes later another "gang-related event" occurred in close proximity to Martin Luther King Boulevard when a police officer attempted to stop a white BMW. Instead of stopping, the BMW fled; there was a "short pursuit," which ended with three Hispanic males being arrested. During the chase, a gun was tossed from the window of the BMW, another was found inside the BMW after the pursuit ended.

On November 5, 2010, Detective Donald Schumacher held a "briefing" with other police officers regarding these gang-related events. Police Officer Frank Reyes was present during the briefing. Detective Schumacher advised Officer Reyes to be on the lookout for a GMC Envoy, license plate No. 5HQG990. The vehicle was registered to "a Mr. Martin," who lived at 4421 38th Avenue. Believing the Envoy was "responsible or possibly responsible" for the shooting on Martin Luther King Boulevard, Detective Schumacher instructed Officer Reyes to stop the Envoy and impound the vehicle for an "evidentiary exam" if and when it was located. Officer Reyes, along with several other officers, set out to look for the Envoy, including surveillance at 4421 38th Avenue.

Shortly after surveillance began at the 38th Avenue residence, the Envoy was seen nearby by a plainclothes officer in an unmarked car. "Marked units," transporting a total of six police officers, then got into position to stop the vehicle. Identified as a "high risk stop," the marked units activated their emergency lights and surrounded the Envoy in a "fan" position. Weapons drawn, the officers asked defendant and

Monica Martin to exit the vehicle. The officers determined defendant was on "searchable probation"; the vehicle was searched and, inside the Envoy, the officers found a revolver wrapped in a hat.

Defendant was arrested and subsequently charged with being a felon in possession of a firearm, carrying a loaded firearm on his person in a public place, and street terrorism. Appended to each of the firearm charges was an allegation that defendant committed these crimes for the benefit of a street gang. Defendant pled not guilty and filed a motion to suppress the evidence seized after the Envoy was stopped.

The magistrate denied defendant's motion. The court ruled, "[w]e cannot ignore there are questions about what is the actual color of that Envoy. We do know what the license plate of that Envoy is and that was testified to consistently. Whether that Envoy was gray, silver, brown, tan or gold, everyone testified that it was an Envoy.

"One individual testified it was a Chevy. Whether that is a distinction without a difference, I do not know, but I think it's clear based on the totality of the circumstances that the detention was reasonable to ascertain whether or not that vehicle was involved in a drive-by shooting."

Defendant subsequently withdrew his not guilty plea and pled no contest to being a felon in possession of a firearm and street terrorism. In exchange, the prosecution agreed to dismiss the remaining charges and allegations, and agreed to a sentence of two years and eight months in state prison.

Defendant's probation was revoked and terminated in an unrelated matter, he was ordered to pay various fines and fees, and he was awarded 270 days of custody credit (180 actual and 90 conduct).

DISCUSSION

Defendant's sole contention on appeal is that the magistrate erred in denying his motion to suppress the evidence obtained after the Envoy was stopped on November 5, 2010. Defendant's contention is unavailing.

In reviewing a denial of a suppression motion, "[w]e defer to the trial court's factual findings, express or implied, where supported by substantial evidence" and decide independently whether the officer's conduct in performing the traffic stop and search was constitutionally reasonable. (*People v. Glaser* (1995) 11 Cal.4th 354, 362; *People v. Lindsey* (2007) 148 Cal.App.4th 1390, 1395; *People v. Coulombe* (2000) 86 Cal.App.4th 52, 55-56.)

To justify an investigative stop or detention, an officer must have specific and articulable facts causing him to entertain a reasonably objective suspicion that some activity relating to crime has occurred or is about to occur and the person to be detained is involved in that activity. (*In re Raymond C.* (2008) 45 Cal.4th 303, 307; *People v. Souza* (1994) 9 Cal.4th 224, 231.) The reasonable suspicion standard applies to vehicle stops. (*People v. Colbert* (2007) 157 Cal.App.4th 1068, 1072; *People v. White* (2003) 107 Cal.App.4th 636, 641-642; *U.S. v. Lopez-Soto* (9th Cir. 2000) 205 F.3d 1101, 1104-1105.)

Here, Detective Schumacher directed Officer Reyes to stop the Envoy, license plate No. 5HQG990, and impound the vehicle for investigation related to the Martin Luther King Boulevard drive-by shooting. At that time, Schumacher knew that Envoy was used to transport at least one gang member suffering from a gunshot wound to the hospital. Schumacher also knew three days later, an Envoy similar to that Envoy was involved in the gang-related drive-by shooting on Martin Luther King Boulevard.

Knowing these specific and articulable facts, it was reasonable for Schumacher to suspect there was evidence related to the Martin Luther King Boulevard drive-by shooting in or on the Envoy license plate No. 5HQG990. It was therefore reasonable to stop the vehicle for investigation. The search of defendant and the vehicle was further supported by defendant's probationary status. Accordingly, we find no error.

We do note a clerical error in the abstract of judgment. For his conviction on the charge of street terrorism, defendant was sentenced to eight months in state prison (one third of the middle term). The abstract of judgment, however, indicates defendant was sentenced only to seven months for that conviction. We will direct the trial court to correct the error.

DISPOSITION

The trial court is directed to correct the abstract of judgment to reflect a sentence of eight months on defendant's conviction for street terrorism and deliver a certified copy of the corrected abstract to the California Department of

Corrections and Rehabilitation. The judgment is affirmed as corrected.

ROBIE, J.

We concur:

BLEASE, Acting P. J.

MAURO, J.